

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *ex rel.*)
JEFFREY J. BIERMAN,)
)
Plaintiff,)
)
v.)
)
ORTHOFIX INTERNATIONAL N.V.,)
ORTHOFIX, INC., ORTHOLOGIC)
CORP., DJO INCORPORATED,)
REABLE THERAPEUTICS, INC., THE)
BLACKSTONE GROUP, L.P., BIOMET)
INC., EBI, L.P., EBI HOLDINGS, INC.,)
EBI MEDICAL SYSTEMS, INC.,)
BIOELECTRON, INC., LBV)
ACQUISITION, INC., and, SMITH &)
NEPHEW, INC.,)
)
Defendants.)
_____)

Case No. 05-10557 (EFH)

**THE EBI ENTITIES' MOTION TO DISMISS THE SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT OF RELATOR JEFFREY J. BIERMAN**

Pursuant to Federal Rules of Civil Procedure 8(a), 9(b) and 12(b)(6); the Local Rules of this Court; and the Court's July 6, 2010 Order, Defendants EBI, LLC (f/k/a EBI, L.P.), EBI Holdings, LLC (f/k/a EBI Holdings, Inc.), EBI Medical Systems, LLC (f/k/a EBI Medical Systems, Inc.), and Bioelectron, Inc. (collectively, the "EBI Entities") hereby move to dismiss all claims against them asserted in the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman. The EBI Entities rely on the Joint Memorandum in Support of Defendants' Motions to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman (the "Joint Memorandum"), filed on behalf of all defendants in this action and incorporated herein by reference, and the Memorandum of Law in Support of the EBI Entities'

Motion to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman (the “EBI Entities’ Memorandum”), filed herewith and incorporated herein by reference.

WHEREFORE, for all of the reasons set forth in the Joint Memorandum and the EBI Entities’ Memorandum, the EBI Entities respectfully request that this Court dismiss the Amended Complaint as to the EBI Entities in its entirety and with prejudice.

Dated: August 17, 2010

Respectfully submitted,

/s/ Douglas A. Robertson

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Medical Systems, LLC (f/k/a EBI Medical Systems, Inc.),
and Bioelectron, Inc.*

ORAL ARGUMENT REQUESTED

Pursuant to Local Rule 7.1(d), the EBI Entities respectfully request oral argument on this motion.

Dated: August 17, 2010

Respectfully submitted,

/s/ Douglas A. Robertson
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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

Pursuant to Local Rule 7.1(a)(2) the undersigned certifies that counsel for the Defendants has attempted to confer with Relator's counsel in a good faith effort to resolve or narrow the issues presented by this motion.

/s/ Douglas A. Robertson
Douglas A. Robertson

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2010, I caused a true and correct copy of the foregoing EBI Entities' Motion to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman, and the accompanying Memorandum of Law in Support of the EBI Entities' Motion to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman, to be filed via the court's electronic filing system and served on all parties registered to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Douglas A. Robertson
Douglas A. Robertson